

BILL NO. S-96-08-* / 0

SPECIAL ORDINANCE NO. S- 600-96

AN ORDINANCE approving the Contract between St. Joe Township Investors, L.P. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

**NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL
OF THE CITY OF FORT WAYNE, INDIANA:**

SECTION 1. That the Contract by and between St. Joe Township Investors, L.P. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:


the purchase of a section of relief sewer for the North Maumee Interceptor; involving a total cost of Eight Hundred Forty Thousand Two Hundred And no/100 Dollars (\$840,200.00).

SECTION 2. Prior Approval has been requested from Common Council on **August 13, 1996.** Two copies of said Contract are on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 3. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.


Council Member

APPROVED AS TO FORM
AND LEGALITY


J. Timothy McCauley, City Attorney

MEMORANDUM

TO: Board of Public Works

FROM: Patrick W. Callahan, Manager WPC Engineering *PWC*

SUBJECT: Contract Between The City of Fort Wayne and St. Joe Township Investors, L.P. to Buy a Section of Relief Sewer for The North Maumee Interceptor

DATE: August 6, 1996

The 1994 Wastewater Master Plan, 1989 and 1992 flow monitoring studies, complaint history, and inspections by WPC Maintenance have all indicated that the North Maumee Interceptor does not have enough capacity to handle wet weather flows that enter it. The City is currently designing and planning to construct a section of relief sewer that will eliminate one of the bottlenecks in the interceptor so that existing flows will not backup and come out of the sewers. However, other sections of the North Maumee Interceptor restrict future development of the area served by this interceptor.

A group of private investors has proposed to design and build additional relief sewers that would create new capacity to allow development to continue in the area served by the North Maumee Interceptor. Upon completion of the new relief sewer, the investors propose to sell it to the City and accept as payment connection fees collected by the City from new development that utilizes the capacity created by the proposed relief sewer.

The Water Pollution Control Utility's first obligation has been to its existing customers. This means that Utility resources are allocated to taking care of existing flows and regulatory mandates before being used to support new growth. This contract allows new growth to support itself without diverting Utility resources from projects that benefit existing customers.

The cost of the proposed investor built relief sewer is \$840,200.00. The current area connection fee that will generate funds to pay this amount is \$2.58/gallon of flow generated per day. It is projected that over \$400,000.00 in connection fees can be collected before any payments are due.

Prior approval is requested so that developers may take advantage of this construction season.

11:06 AM 9-90V 96

CONTRACT FOR THE TRANSFER OF SEWER LINES AND FACILITIES

This agreement is made by and between the City of Fort Wayne, Indiana, an Indiana municipal corporation by and through the Fort Wayne Board of Public Works, City County Building, One Main Street, Fort Wayne, Indiana 46802 (hereinafter referred to as "City"), and St. Joe Township Investors, L.P., 3711 Rupp Drive, Fort Wayne, Indiana 46815 (hereinafter referred to as "Investor"), pursuant to Indiana Code 36-9-23-6 and I.C. 36-9-23.14(c).

WITNESSETH:

WHEREAS, City has designated certain areas in the NORTH EAST AREA of Allen County as a "Red Zone" area, where there is no wet weather sewer capacity which has created a prohibition on development of the area; and

WHEREAS, City and Investor have agreed to extend the sanitary sewer line and facilities in the NORTH EAST AREA of Allen County, Indiana for the purpose of increasing the capacity of the City's facilities to permit future development; and

WHEREAS, Investor has agreed to transfer certain sanitary sewer lines and facilities, and City desires to acquire the same upon certain terms and conditions hereinafter set forth; and

NOW THEREFORE in consideration of the mutual covenants herein contained it is agreed upon between the parties as follows:

1. **TRANSFER DATE** Investor hereby agrees to transfer to the City of Fort Wayne approximately 4,000 lineal feet of 24 inch sanitary sewer lines constructed in accordance with the plans and specifications which are attached hereto and marked as Exhibit A ("Sewer Lines"). The sewer line and facilities shall serve as an overflow system for the North Maumee Interceptor. The cost of construction and installation of said sewer line shall be born by Investor. The location of the sewer line shall be in accordance with the attached plans and specifications marked Exhibit A. The transfer shall be completed on or before May 1, 1998.

2. **PERMITS AND EASEMENTS** Investor shall acquire all necessary permits and easements to accomplish the construction and installation of said Sewer Lines. City agrees to assist Investor in obtaining the necessary permits, easements and rights of way.

3. **TRANSFER PRICE** Investor agrees to transfer said sewer line and facilities to City, and City agrees to pay to Investor the sum of Eight Hundred Forty Thousand Two Hundred Dollars (\$840,200.00) together with interest as provided herein, as full payment for said Sewer Lines and facilities, as set out in paragraph 4 below.

4. **MANNER OF PAYMENT** Pursuant to I.C. 36-9-23-17 the City shall establish a cumulative fund from which City shall pay Investor the transfer amount. Said cumulative fund shall be the sole source of payment to Investor and shall be funded wholly from Area Connection Fees under I.C. 36-9-23-29. The \$840,200.00 transfer price and interest as provided herein shall be paid to Investor upon collection of Area Connection Fees as they are received from all developers and all future users of sewer known as the North Maumee Interceptor north of North River Road whether by direct tap or connection to a lateral or extension thereof. In addition to the \$840,200.00 the City shall pay to Investor the sum of nine percent (9%) interest computed annually upon the unpaid balance of said transfer, accruing from the date when the Fort Wayne Board of Public Works accepts said transfer to City, which said acceptance shall not be unreasonably withheld. Once Investor has received payment of the total agreed upon amount set out in paragraph 3 above plus all interest due in accordance with this agreement, any sums remaining in the cumulative fund or thereafter deposited to said fund shall become net general revenue of the Water Pollution Control Utility.

5. **CALCULATION OF AREA CONNECTION FEE** The fee shall be established in accordance with Fort Wayne Board of Public Works Resolution Number 82-292-6. A fee based on the anticipated gallons of average daily flow generated by connecting structures or development shall be calculated (the parties agree that a single-family residential unit equals 310 gallons per day ["GPD"]). The rate per gallon of flow per day (GPD) shall be as established by the Board of Public Works and adjusted from time to time to reflect the increases in the Consumer Price Index. This rate shall not be less than \$2.58 per GPD.

6. **SEWER TAPS** The Sewer Lines and facilities in accordance with the approved plans and specifications shall create 713,000 GPD of new capacity for the North Maumee Interceptor sewer line. The capacity shall be owned by the City, and, maintained under the control and supervision of City.

7. **PAYMENT OF FEES** All future developers or users of the sewer known as North Maumee Interceptor north of North River Road, whether by direct tap or connection to a lateral or extension thereof, must pay the area connection fee for the entire development as shown on the primary plat, or Development Plan, filed with the appropriate Planning Commission, before starting any sewer construction with the development.

8. **AREA SERVED** The parties agree that sewer extensions will not be restricted or limited to only the area that has been designated as "Red Zone" areas; provided however, the area to be served shall not extend beyond an area that can be served by an orderly extension of the present sewer lines.

9. **DETRIMENTS** The City agrees to continue issuing the taps until the 713,000 GPD of new capacity is used. Any detriments or complications which prevent the

City from permitting all such taps shall be corrected by the City at its expense. City shall not place any voluntary moratoriums on the North Maumee Interceptor sewer. City represents that there are no complications at present which would curtail sewer service on the North Maumee Interceptor sewer in the foreseeable future, once the additional Sewer Lines set out in Exhibit A are accepted by the Fort Wayne Board of Public Works.

10. **"RED ZONE" WITHDRAWAL** Immediately upon the advertising for bids by the City of Fort Wayne Board of Public Works for the North Maumee Relief Sewer Project and the execution of this agreement, City agrees to lift the moratorium on the approval of sewer extension permits in the "Red Zone" area of North East Allen County that is presently served by or will be served by the North Maumee Interceptor sewer line or any extensions or laterals thereof at any point north of North River Road. City agrees to advertise said bids on or before September 6, 1996.

11. **OWNERSHIP AND MAINTENANCE** City shall receive from Investors ownership of and shall thereafter be responsible for the maintenance of such sanitary sewer line.

12. **JURISDICTION** It is agreed that this agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Indiana.

13. **MODIFICATION** Any modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in writing and executed by each party or an authorized representative of each party.

14. **WAIVER** The failure of either party to this agreement to insist upon the performance of any of the terms and conditions of this agreement, or the waiver of any breach of any of the terms and conditions of this agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

15. **SAVINGS CLAUSE** The invalidity of any portion of this agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

16. **ATTORNEY FEES** In the event that any action is filed in relation to compliance with this agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the successful party's attorney's fees.

17. **HEADINGS** The titles to the paragraphs of this agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this agreement.

18. **NOTICES** Any notice provided for or concerning this agreement shall be in writing and shall be deemed sufficiently given when sent by certified or registered mail if sent to the respective address of each party as set forth at the beginning of this agreement.

19. **UNFORESEEN PROBLEMS** Neither party to this agreement shall be liable to the other for any loss cost, or damage, arising out of, or resulting from, any failure to perform in accordance with the terms of this agreement where such failure shall be beyond the reasonable control of such party, which, as employed herein, shall be deemed to mean, but not be limited to, acts of God, strikes, lockouts, or other industrial disturbances, wars, whether declared or undeclared, blockages, insurrections, riots, governmental actions, explosions, fire, floods, or any other cause not within the reasonable control of either party.

20. **ENTIRE AGREEMENT** This Agreement sets forth the entire agreement and understanding between the parties, and supersedes all prior discussions or agreements (written or oral) between them. Neither party shall be bound by any conditions, definitions, warranties, understandings or representations other than as expressly provided herein, or as duly set forth on or subsequent to the date hereof in writing and signed by a proper and duly authorized officer or representative of the party to be bound thereby.

21. **EFFECTIVE DATE** This Agreement shall not be effective until approved by the common council of the City of Fort Wayne as required by I.C. 36-9-23-6(b).

IN WITNESS WHEREOF, each party to this agreement has caused it to be executed at Fort Wayne, Indiana on the date indicated below.

Dated this 7 day of Aug., 1996

"CITY"

CITY OF FORT WAYNE, INDIANA,
an Indiana municipal corporation
and through the Fort Wayne Board of
Public Works

By: Linda Buskirk
Linda Buskirk, Chairman

By: Terrance P. McCaffrey
Terrance P. McCaffrey, Member

By: John Stafford
John Stafford, Member

Attest: Patricia J. Crick
Patricia J. Crick, Clerk

"INVESTOR"

ST. JOE TOWNSHIP INVESTORS, L.P.

By: John V. Tippmann, Sr.
Tippmann Properties, Inc.
Its General Partner

By: John V. Tippmann, Sr.
John V. Tippmann, Sr., Its President

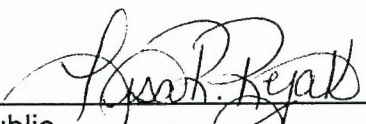
STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

2nd Before me, the undersigned, a Notary Public in and for said County and State, this day of August, 1996, personally appeared John V. Tippmann, Sr., the president of Tippmann Properties, Inc., to me known to be such officer of said corporation, General Partner of St. Joe Township Investors, L.P., an Indiana Limited Partnership, who acknowledged the execution of the foregoing instrument for and on behalf of said partnership and by authority of its partners. Witness my hand and notarial seal.

My Commission Expires:

November 6, 1997

LISA R. REJAK
Notary Public, State of Indiana
Resident of Allen County
Commission Expires November 6, 1997



Notary Public
Printed Lisa R. Rejak
County of Residence Allen

This instrument prepared by William D. Swift, Attorney, 803 S. Calhoun Street, Suite 500, Fort Wayne, Indiana 46802.

Read the first time in full and on motion by Phil
and duly adopted, read the second time by title and referred to the
Committee on City Affairs (and the City Plan Commission
for recommendation) and Public Hearing to be held after due legal notice, at
the Common Council Conference Room 128, City-County Building, Fort
Wayne,, Indiana, on _____, 19____, the _____ day of _____
M., E.S.T. _____, at _____ o'clock

DATED: 8-13-96

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by _____
and duly adopted, placed on its passage. PASSED ✓ ~~LOST~~
by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>9</u>			
BENDER	<u>✓</u>			
CRAWFORD	<u>✓</u>			
EDMONDS	<u>✓</u>			
HALL	<u>✓</u>			
HAYHURST	<u>✓</u>			
HENRY	<u>✓</u>			
LUNSEY	<u>✓</u>			
RAVINE	<u>✓</u>			
SCHMIDT	<u>✓</u>			

DATED: 8-27-96

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,
Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)
(SPECIAL) (ZONING) ORDINANCE RESOLUTION NO. S-60-96
on the 27th day of August, 1996

ATTEST:

(SEAL)

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

OD Schmidt
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on
the 28th day of August, 1996,
at the hour of 12:00 o'clock P, M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 30th day of August,
1996, at the hour of 2:30 o'clock P, M., E.S.T.

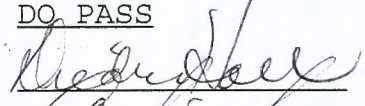
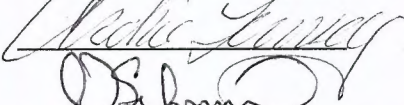
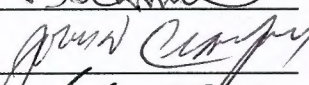
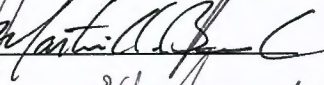
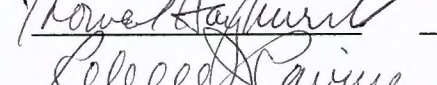
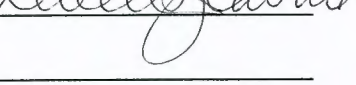
PAUL HELMKE
PAUL HELMKE, MAYOR

BILL NO. S-96-08-10

REPORT OF THE COMMITTEE ON
CITY UTILITIES
ARCHIE L. LUNSEY - DEDE A. HALL - CO-CHAIR
ALL COUNCIL MEMBERS

WE, YOUR COMMITTEE ON CITY UTILITIES TO WHOM WAS
REFERRED AN (ORDINANCE) (~~RESOLUTION~~) approving the contract between
St. Joe Township Investors, L.P. and the City of Fort Wayne, Indiana, in
connection with the Board of Public Works

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION
AND BEG LEAVE TO REPORT BACK TO THE COUNCIL THAT SAID
(ORDINANCE) (~~RESOLUTION~~)

<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>	<u>NO REC</u>
			
			
			
			
			
			

DATED: 8-27-96

Sandra E. Kennedy
City Clerk